

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, v. QWEST CORPORATION AND MCI WORLDCOM COMMUNICATIONS, INC., Respondents.	DOCKET NO. FCU-02-5 (C-02-22)
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND NOTICE OF HEARING**

(Issued May 31, 2002)

On January 15, 2002, Mark Seed Company (Mark Seed) filed an informal complaint with the Utilities Board (Board) regarding its long distance telephone service pursuant to Iowa Code § 476.103 (2001). In its complaint, Mark Seed stated it had agreed to change its preferred interexchange carrier from OneStar Long Distance, Inc. (OneStar) to MCI WorldCom Communications, Inc. (MCI), based on representations by MCI salesperson Tina Bryant. Mark Seed also stated that, upon discovering the rates billed by MCI did not match those promised by Ms. Bryant, it called MCI to complain. Mark Seed stated it called OneStar on June 18, 2001, and requested to be switched back to OneStar as its preferred interexchange carrier. In

its complaint, Mark Seed outlined a series of efforts it had then taken to try to correct its long distance billing because it continued to be billed by Qwest Corporation (Qwest) for MCI calls. The details of these events are contained in informal complaint file number C-02-22, which is incorporated into the record in this case.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. On February 1, 2002, Qwest filed a letter with the Board stating that it had discovered a routing error on January 7, 2002, that was causing the customer to be billed by MCI. Qwest apologized, stated it had corrected the error and had recoured all charges back to MCI, and that it would recourse MCI charges that would likely appear on the customer's February bill. As outlined in the May 14, 2002 Board order, the problem was not solved and the customer's Qwest monthly bills continued to include MCI charges. The latest Qwest bill in the file, dated May 4, 2002, has MCI charges on it.

On April 11, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a request for formal complaint proceedings. The Board issued an order dated May 14, 2002 granting the request, docketing the complaint, assigning the case to an administrative law judge, and ordering Qwest to file certain information within 20 days of the date of the order.

Pursuant to Iowa Code § 476.3(1) and 199 IAC 6.5, a hearing regarding this complaint will be held.

The statutes and rules involved in this case include Iowa Code §§ 476.3, 476.33, 476.51, 476.103, and Board rules at 199 IAC 1.8, 22.23, and Chapters 6 and 7.

The issues

The issues in this case generally involve the change of Mark Seed's long distance telephone carrier from OneStar to MCI, the requested change back from MCI to OneStar, and the Qwest monthly bills that continue to show MCI long distance charges. One issue is whether MCI and Qwest complied with state and federal law when they changed Mark Seed's service from OneStar to MCI. Another issue is whether MCI and Qwest complied with state and federal law when Mark Seed requested that they change the company's service back to OneStar. Other issues are listed in the Board's order issued May 14, 2002.

Another issue is whether a civil penalty should be imposed on Qwest or MCI, or both, pursuant to Iowa Code § 476.103(4) and 199 IAC 22.23(5). Also at issue is whether it is appropriate to impose a civil penalty on Qwest or MCI, or both, pursuant to Iowa Code § 476.51. Other issues may be raised by the parties prior to and during the hearing.

According to Iowa Code § 476.103(4) and 199 IAC 22.23(5), a civil penalty may only be imposed after notice and an opportunity for hearing. This order constitutes such notice that a civil penalty may be imposed on Qwest or MCI, or both, after hearing, if it is found that Qwest or MCI, or both, violated a statute or rule of the Board, and if the circumstances warrant such imposition.

Prepared testimony and exhibits

All parties will have the opportunity to respond and present evidence and argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3). This procedure also tends to shorten the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

Party status

The Consumer Advocate, Qwest, and MCI are currently the parties to this proceeding. If Mark Seed wishes to be a party in the case, it must notify the Board in writing.

Each party must file an appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. The written appearance should substantially conform to 199 IAC 2.2(15). It should include the docket number of this case as stated in the caption above. Appearances should be filed at the earliest practical time with the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance should be accompanied by a certificate of service that conforms to 199 IAC 2.2(16) and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of that communication should also be sent at the same time to each of the other parties to this proceeding. These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

Pursuant to 199 IAC 6.7 and the Board Order dated May 14, 2002, the written complaint and all supplemental information from the informal complaint proceedings, identified as Docket No. C-02-22, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

All parties should examine Iowa Code §§ 476.3, 476.33, 476.51, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

IT IS THEREFORE ORDERED:

1. On or before June 24, 2002, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits. The prepared direct testimony may refer to any document already in the record (including the information to be filed by Qwest pursuant to the Board's May 14, 2002, order), and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate and any intervenors must address the issues discussed above and file any other evidence not previously filed.

2. On or before July 22, 2002, MCI and Qwest must file prepared rebuttal testimony and exhibits. MCI and Qwest may refer to any document already in the record, and do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. MCI and Qwest may also refer to the information filed pursuant to the May 14, 2002, Board order. In their prepared

testimony and exhibits, MCI and Qwest must address the issues discussed above and file any other evidence not previously filed.

In addition, in its prepared testimony, MCI must explain the references "TO DIR ASSIST" and "TO SPORTS" on Mark Seed's March 4, 2002, bill. MCI must also file proof of verification of Mark Seed's authorization for a change in service, and a copy of the script its sales people use when calling prospective customers. If the script Tina Bryant used when she called Mark Seed differs from the current script, MCI must file a copy.

In its prefiled testimony, Qwest must explain in detail what it did to correct the problem, why the problem was not corrected for each time Qwest stated it had been corrected, why the customer continues to receive MCI charges, whether the problem is corrected, and what Qwest is doing to ensure the customer will not receive another bill with MCI charges on it. Qwest must also file a copy of any bill it sends to Mark Seed after the May 4, 2002, bill and before the hearing. If a bill contains MCI charges, Qwest must explain why and what it has done to correct the problem.

3. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits, it must do so by August 12, 2002.

4. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on August 28, 2002, commencing at 10 a.m. The parties should plan to come to the hearing room at 9:45 a.m. to mark exhibits. Each party must provide a copy of its prepared testimony to the court reporter. Persons with disabilities requiring

assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

5. Any party who wishes to file a pre-hearing brief may do so on or before August 21, 2002. If needed, a post-hearing briefing schedule will be established at the conclusion of the hearing.

6. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Utilities Board at the earliest possible time.

7. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this Order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 31st day of May, 2002.